BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.(MD) No.1982 of 2017
and
W.M.P.(MD)No.1640 of 2017

R.Sivakumar ... Petitioner

-Vs-

The Sub Registrar (Registration Department)
Pattukkottai,
Thanjavur District. ... Respondent

Prayer : Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order passed by the Respondent in his proceedings in No.Nil dated 19.12.2016 and quash the same.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

O R D E R

This writ petition is filed challenging the proceeding of the respondent, dated 19.12.2016, calling upon the petitioner to pay the deficit stamp duty in respect of a registered sale deed, dated 16.09.2008, under Document No.1475 of 2008.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. A counter affidavit is filed by the respondent, wherein, apart from supporting the impugned order, it is contended that the petitioner can file an appeal before the Chief Controlling Revenue Authority under Section 33-A(3) of the Indian Stamp Act, 1899.

4. This Writ Petition is filed mainly on two grounds. Firstly, it is urged that the impugned order is in violation of principles of natural justice, as the petitioner was not put on notice before passing the impugned order. Secondly and most

importantly, it is urged that the respondent is not entitled to pass the impugned order after the expiry of three years from the date of registration of the instrument and thus, the jurisdiction of the respondent is ousted, as contemplated under Section 33-A of the Indian Stamp Act, 1899.

5.The learned counsel appearing for the petitioner in support of such contention relied on unreported decisions of this Court made in W.P.No.2597 of 2007 dated 31.03.2010 and W.P.No.4138 of 2008 dated 14.02.2013.

6.Per contra, the learned Additional Government Pleader appearing for the respondent reiterated the contention raised in the counter affidavit and submitted that the petitioner can agitate the matter before the appellate authority.

7.Heard both sides.

8.It is not in dispute that the respondent by way of the impugned order sought to recover the deficit stamp duty from the petitioner in respect of a sale deed 16.09.2008, under Document No.1475 of 2008. It is also not in dispute that such proceedings impugned in this writ petition has been passed by invoking the power under Section 33-A of the Indian Stamp Act, 1899, which reads as follows:-

> "**33-A. Recovery of deficit stamp duty.-(1)** Notwithstanding anything contained in section 33 or in any other provisions of this Act, if after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue.
>
> Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:
>
> Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.
>
> (2) The certificate of the Registrar of the district under sub-section(1) shall, subject only to appeal under sub-section(3), be final and shall not be called in question in any court or before any authority.
>
> (3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any

such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed."

9.Perusal of the above provision clearly indicates that the respondent is not entitled to commence the enquiry under Section 33-A after the expiry of three years from the date of registration of the instruments. In other words, the registering authority seized to have power to conduct enquiry under Section 33-A in respect of a document after the expiry of three years from the date of its registration. In this case, there is no enquiry conducted at all within a period of three years by putting the petitioner on notice. On the other hand, straightaway the impugned order is passed calling upon the petitioner to pay the deficit stamp duty after a period of eight years from the date of its registration. Therefore, the impugned order, apart from suffering from the principles of natural justice, is also liable to be set aside on the reason that the same is barred by limitation. In W.P.No.2597 of 2007, dated 31.03.2010, this Court has observed at paragraph Nos.8 to 11 as follows:-

> From the perusal of the above provision viz., Section 33A, particularly second proviso to Section 33A(1), it is evident that no enquiry for the recovery of the amount shall be commenced after expiry of three years from the date of registration of the instrument. In this case, the document was presented on 8.7.2002 and registered on 2.8.2002.
>
> 9. Similar issue was considered by this Court in the decision reported in 1994 (2) LW 547 (R.M.Ebrahim v. The District Registrar Office, Kanjeepuram). In the said decision this Court quashed similar recovery notice holding that recovery proceedings for stamp duty can be issued only after due enquiry and the same can be issued within three years from the date of registration.
>
> 10. In this case, the document having been admittedly registered on 2.8.2002, the first demand notice issued on 15.7.2005 was without conducting any enquiry. A perusal of the registered release deed shows that the deed was presented on 8.7.2002 and registered as Document No.2144 of 2002 on 2.8.2002. The respondent has got time to initiate proceedings till 2.8.2005, admittedly demand dated 15.7.2005 was issued without conducting any enquiry. For conducting enquiry, for the first time notice was issued only on 29.12.2006 by fixing the date of enquiry as 22.1.2007. Thus, enquiry notice issued to the petitioner on 29.12.2006 is beyond the period of three years and therefore the action of the respondent is barred by limitation. The notice dated 15.7.2005 cannot be

treated as notice for conducting enquiry as it is only a demand to recover the amount. The said notice is not in accordance with the first proviso to section 33A (1), which clearly states that certificate to recover amount shall be granted unless due enquiry is made and such person is given opportunity of being heard.

11. In view of the said undisputed facts and having regard to the statutory provision and the judgment cited supra, the respondent is not having any jurisdiction to proceed further in the matter as the same is not within the time as contemplated under section 33A(1) of the Indian Stamp Act. For the loss of revenue to the State, the respondent alone is responsible. If the respondent was vigilant and aware of the statutory provision viz., Section 33A of the Indian Stamp Act, 1899, he could have initiated enquiry before the expiry of three years from the date of registration on 2.8.2002. Section 33A being prohibitory in nature, the petitioner is entitled to succeed in this writ petition. Consequently, the writ petition is allowed. No costs.

10.Similar view was taken by the another learned single Judge in W.P.No.4138 of 2008 dated 14.02.2013, wherein at paragraph 4 to 6 it is observed as follows:-

"4.The impugned order has been challenged only on the ground of limitation.

5.It is the case of the petitioners that under Section 33-A of the Stamp Act, as well as Section 80-A of registration Act, limitation to claim additional stamp duty is three years. Therefore, it was not open to the respondents to demand additional stamp duty in 2007, with regard to the document registered in the year 1994.

6.There is force in the contention raised by the learned counsel for the petitioners. The admitted facts on record shows that the deeds were registered in the year 1994, whereas show cause notice has been issued in the year 2007 which is hopelessly time barred.

Consequently, the writ petition is allowed. The impugned order is quashed."

11.No doubt, the learned Additional Government Pleader sought to contend that the petitioner can file an appeal before the appellate authority against the impugned order, since statutory appeal remedy is available to the petitioner as provided under Section 33-A(3) of the said Act.

12.I do not think that such contention is justified in view of the fact that the very jurisdiction of the respondent is ousted after the period of three years from the date of its registration. Therefore, when the impugned order is to be treated as the one without jurisdiction, the question of filing the statutory appeal does not arise. Accordingly, I reject the above-said contention of the learned Additional Government Pleader. Consequently, the Writ Petition is allowed and the impugned order is set aside. The learned Additional Government Pleader submitted that liberty may be granted to the registering authority to proceed against the petitioner in a manner known to and sustainable under law in accordance with other provision. If any such provision is available to the respondent, it is open to them to do so in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To:
The Sub Registrar (Registration Department)
Pattukkottai,
Thanjavur District.

+1cc to Mr.V.Panneer Selvam, Advocate Sr.No.9014
+1cc to special Government Pleader SR.No.8652

skn
sm:MR:10/03/2017:5P/4C

W.P.(MD) No.1982 of 2017
and
W.M.P.(MD)No.1640 of 2017
15.02.2017